

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Eddrick Tompkins,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:09cv357
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Dayton Correctional,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge J. Gregory Wehrman filed on July 19, 2010 (Doc. 17), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired August 6, 2010, hereby ADOPTS said Report and Recommendation.

Accordingly, petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 3) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to the claim alleged in Ground One of the petition and the additional claims presented in his traverse brief, which this Court has concluded are procedurally barred from review, because under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" will not find it debatable whether this Court is correct in its procedural ruling. A certificate of appealability will not issue with respect to the claims alleged in Grounds Two through Four of the petition, which were addressed on the merits herein, in the absence of a substantial showing that petitioner stated in any of those grounds a "viable claim of the denial of

a constitutional right” or that the issues presented are “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.S. § 2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith,” and therefore **DENY** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 982 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court